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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

No. 326.

J. H. STEPHENSON, ET AL., *Appellants*,

vs.

T. BINFORD, ET AL., *Appellees*.

STATEMENT OF BASIS OF JURISDICTION.

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May it Please the Court:

As a supplement to and in support of a joint motion of all parties in the above proceeding to advance the cause for early hearing before this Court, your petitioners desire to submit the following as a basis for the jurisdiction of your Honorable Court in this proceeding:

A. STATUTES.

Section 266 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, sec. 1, 43 Stat. 938). USCA Title 28, Section 380.

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, sec. 1, 43 Stat. 938).

B. DECREE.

The case was tried on application for permanent injunction before a statutory three-judge court. On the 8th day of June, A.D. 1932, the Court entered its decree (one member dissenting), denying in all things the application for permanent injunction. (Tr. of R. pp. 222, 223)* The application for appeal was filed on the 6th day of July, A.D. 1932, and the order of the Court allowing the appeal was entered July 6, 1932 (Tr. of R. pp. 241, 242).* Citation to respondents was duly issued and thereafter the Court enlarged the time for the docketing of this cause and the filing of the record with this Honorable Court until September 1st, 1932. (Tr. of R. p. 348.)* The case was docketed in the Supreme Court on August 30, 1932, being cause No. 326—upon the docket of this Court.

C. RULINGS.

This proceeding is an appeal from a decision of a statutory three-judge court, consisting of a United States Circuit Judge and two United States District Judges, convoked by the judge presiding over the District Court of the United States for the Southern District of Texas. This appeal is being prosecuted from the action of the majority of that Court in denying unto complainants the permanent injunction applied for to restrain the enforcement of House Bill 335, passed by the 42nd Legislature of Texas at its regular session in 1931, and published as Chapter 277, Page 480, Acts of Forty-second Legislature (Vernon Sayles Texas Civil Statutes, Art. 911b and Penal Code Article 1690b), and which Act became effective on August 22, A.D. 1931. Appellants here, who were complainants below, all contract carriers operating over the highways of the State of Texas, contended that certain provisions of said Act, as

*References can be made to the transcript of record forwarded to the Supreme Court by the Clerk of the District Court only, for the reason that it will be some time before the printed record is completed.

applied to them, deprived them of their property without due process of law and denied to them the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States. Complainants' attack was levelled at statutory provisions (contained in said Act) regulating the business and operations of contract carriers, by providing:

(a) That no person shall thereafter operate as a contract carrier unless he shall have received a permit from the Railroad Commission, and that such permit shall not be issued until the applicant shall have in all things complied with the requirements of the Act;

(b) That the permit shall be issued only after the Commission has determined that the proposed operation of any such contract carrier will not impair the efficient public service of a common carrier then adequately serving the same territory;

(c) That it is the duty of the Railroad Commission to supervise and regulate the transportation operations of contract carriers and to fix, prescribe, or approve the maximum or minimum, or maximum and minimum, rates, fares and charges of such contract carriers;

(d) That it is the duty of the Railroad Commission to prescribe minimum rates, fares and charges to be collected by such contract carriers which shall not be less than the rates prescribed for common carriers for substantially the same service;

(e) That before any permit may be issued, the contract-carrier applicant must carry insurance to cover the cargo that will be transported by him as such contract carrier; and

(f) That it is the duty of the Commission to require such contract carriers to keep a set of accounts strictly in accordance with such classification of accounts and rules as may be prescribed by the Commission, and to file reports and such other data as the Commission may deem necessary.

The suit was instituted under the provisions of Section 266 of the Judicial Code as amended, Act of February 13, 1925 (c. 229, 43 Stat. 938).

D. CASES.

Interstate Busses Corporation vs. Blodgett, 48 Supreme Court 230, 276 U. S. 245, 72 L. ed. 551;

Smith vs. Wilson, 273 U. S. 388, 71 L. ed. 699, 47 Supreme Court Reporter 385;

Clark vs. Poor, 274 U. S. 554, 71 L. ed. 1199, 47 Supreme Court Reporter 702;

Herkness vs. Irion, 49 Supreme Court Reporter 40, 278 U. S. 92, 73 L. ed. 198;

Michigan Public Utilities Commission vs. Duke, 266 U. S. 570;

Becker vs. Kuykendall, 267 U. S. 307;

Frost vs. Railroad Commission of California, 271 U. S. 583;

Packard vs. Banton, 264 U. S. 140, 68 L. ed. 596;

Smith vs. Cahoon, 283 U. S. 553, 75 L. ed. 1264.

Respectfully submitted,

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